

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009CF1721
)	EEOC NO.: 21BA90605
<b>JOHN DEL GHINGARO</b> )	ALS NO.: 10-0004
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon John Del Ghingaro's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge 2009CN0797; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On September 9, 2008, the Petitioner filed a charge of discrimination with the Respondent. The charge was perfected on December 29, 2008. The Petitioner alleged that the Village of Schaumburg Fire Department ("the Fire Department") harassed him because of his mental disabilities, anxiety disorder (Count A) and depression (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act") On December 2, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On January 14, 2010, the Petitioner filed a timely Request for Review.
2. On September 12, 1992, the Petitioner began working for the Fire Department as a Paramedic.
3. The Petitioner alleged that beginning in 1992, and continuing through March 24, 2008, various members of the Fire Department harassed him by making fun of his last name and its pronunciation. The Petitioner alleged the members of the Fire Department essentially turned his name into a racial slur and used racially derogatory names, typically directed at African

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

Americans, when calling the Petitioner over the Fire Department's internal intercom system, on outside firehouse calls, and on calls at hospital stations.

4. The Respondent determined the Petitioner was first diagnosed with his mental disabilities in April 2008.
5. In his charge, the Petitioner alleged he was harassed from 1992 through March 24, 2008, because of his mental disabilities. During the investigation, the Petitioner stated that he did not believe that he was harassed because of his mental disabilities. Rather, the Petitioner believed that the harassment caused him to develop his mental disabilities.
6. In his Request, the Petitioner seeks to amend his charge to state that as a result of the repeated and prolonged harassment by members of the Fire Department, the Petitioner developed a mental illness, specifically Post Traumatic Stress Disorder ("PTSD"). The Petitioner stated that the repeated ridicule and use of racial slurs in reference to the Petitioner's name, over time, caused the Petitioner to develop a mental disability which prevented him from working for the Fire Department.
7. In its Response, the Respondent asks the Commission to sustain the dismissal the Petitioner's charge for lack of substantial evidence because there was no substantial evidence the Petitioner was harassed because of his mental disabilities.

## **CONCLUSION**

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, 2 (March 7, 1995).

Generally to establish a *prima facie* case of harassment the Petitioner had to establish the following: 1) that he belongs to a protected class; 2) that he was subjected to unwelcome harassment; 3) that the harassment was based upon his protected class; 4) there is a basis for employer liability. See Maria Perez and Commonwealth Edison Co., IHRC, Charge No. 2007CA0347, 2010 WL 3457665 (February 9, 2010) (Ill.Hum.Rts.Com.).

Although the Petitioner originally alleged discrimination based on his mental disabilities, the Petitioner now states that he was not discriminated against because of his mental disabilities. Rather, the Petitioner contends that the alleged harassment by members of the Fire Department caused him to acquire mental disabilities, including PTSD.

Taking as true the Petitioner's allegation that the harassment occurred, nonetheless, the charge was properly dismissed because there is no substantial evidence that the Petitioner was harassed because of his mental disabilities. As the Respondent points out in its Response, the Act is not a general tort statute, and the Act does not offer recompense for mental distress caused by harassment in general. Rather, in order for the Petitioner's harassment claim to be cognizable under the Act, the Petitioner must allege that he was harassed because of some protected category as specified in the Act.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Village of Schaumburg Fire Department, as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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**Entered this 8<sup>th</sup> day of September 2010.**

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box